IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5609 OF 2007

Ambikaprasad Matasharam Sharma ..Petitioner

Vs.

M/s. Guru Nanak Automobiles and anr. ..Respondents

Mr. Anil D. Yadav i/by Mr. D.R. Shah for petitioner.
Mr. B.K. Ashok i/by M/s. Bekay Legal for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : December 06, 2007.

P.C.:

1. Heard the learned counsel for the petitioner who had approached the Labour Court at Mumbai in Complaint (ULP) No. 587 of 1997 alleging that he was illegally terminated from service by the respondents and thus committed an act of unfair labour practice under Item 1 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. The complaint was opposed by the respondents. By considering the evidence adduced by both the parties and the rival submissions, the learned Judge of the Labour Court allowed the

complaint and held that the termination of service of the complainant by the respondents was an act of unfair labour practice. However, instead of granting reinstatement, the Labour Court granted compensation of Rs.1,50,000/- to be paid by the respondents as per its Judgment and Order dated 16/11/2005.

2. Both the parties were aggrieved by this order and, therefore, Revision Application (ULP) No. 7 of 2006 came to be filed by the present respondents, whereas Revision Application (ULP) No.68 of 2006 came to be filed by the petitioner. By a common Judgment and Order dated 16/3/2007 the learned President of the Industrial Court was pleased to dismiss both the revision applications. A limited grievance has been raised in this petition by the original complainant regarding denial of full backwages.

3. The complainant was terminated from service with effect from 20/2/1985 by way of loss of confidence as he had started his own business which as per the respondents were by way of competition. He was employed from the year 1974 as Pump Attendant. In Complaint No. 161 of 1985 filed before the Industrial

Court he was directed to be reinstated as per the order dated 30/11/1994 with 50% backwages. The complainant had approached this court in Writ Petition No. 1032 of 1995, whereas the employer had filed Writ Petition No. 628 of 1995. Both the petitions were disposed off by granting liberty to the complainant to approach the Labour Court.

4. The termination of service of the complainant was an admitted position, as per the letter dated 20/2/1985. However, the employer took the stand that the complainant was doing his personal business during the working hours, he was not paying attention to his duty and the employer had also lost confidence. The Labour Court held that the termination was punitive and was effected without initiating any departmental proceedings. However, while setting aside the termination order, the Labour Court noted that while the complaint was pending the complainant attained the age of 60 years on 2/5/2004 and from the date of his termination he was gainfully employed all along. In these admitted circumstances, the learned Judge of the Labour Court held that the complainant could not be reinstated and he could not be granted full backwages

and, therefore, compensation amount of Rs.1,50,000/- was directed to be paid to the complainant.

5. In the revision applications the Industrial Court considered this factual position and agreed with the view taken by the Labour Court that the complainant was not entitled for reinstatement as he had already attained the age of superannuation and he could not claim full backwages as he was gainfully employed all along in his own business. These concurrent findings recorded by both the courts below cannot be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution.

6. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)